

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rebecca Ho	Team: Squad #3	CCRB Case #: 201411762	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 11/13/2014 12:18 PM	Location of Incident: 280 East 161st Street	Precinct: 44	18 Mo. SOL 5/13/2016	EO SOL 5/13/2016	
Date/Time CV Reported Thu, 11/20/2014 12:35 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 11/20/2014 12:37 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michele Butera	21154	948723	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michele Butera	Abuse: PO Michele Butera questioned an individual.	
B.POM Michele Butera	Abuse: PO Michele Butera stopped an individual.	
C.POM Michele Butera	Abuse: PO Michele Butera stopped § 87(2)(b)	
D.POM Michele Butera	Abuse: PO Michele Butera searched an individual.	
§ 87(4-b) § 87(2)(g)		

Case Summary

On November 13, 2014, at 12:18 p.m., § 87(2)(b) observed an unnamed acquaintance outside of 280 East 161st Street in the Bronx and approached the male to have a conversation with him. § 87(2)(b) made small talk with the male and the male asked § 87(2)(b) § 87(2)(b) § 87(2)(b), for his business card. The male took § 87(2)(b)'s card and placed it into his pocket. PO Michele Butera, who was sitting inside his vehicle ten to twelve feet away, observed the interaction and presumed the exchange was a drug transaction. PO Butera explained he had approached them and pointedly asked the male if a drug transaction had just transpired (**Allegation A**). § 87(2)(b) articulated he did not feel free to leave the scene because he knew PO Butera erroneously believed he had just taken part in a drug transaction (**Allegations B and C**). According to § 87(2)(b) PO Butera asked the male to show what had been handed to him (**Allegation D**). Instead, § 87(2)(b) showed PO Butera an identical business card. Satisfied, PO Butera walked away. § 87(2)(b) was not arrested or summonsed as a result of this incident (complaint encl. 4a-b, CCRB statement encl. 5a-g). § 87(4-b), § 87(2)(g)

§ 87(2)(b) indicated that the male wished to remain anonymous for this investigation and did not provide his information to the investigation. Furthermore, there is no police documentation of personal information for the male.

Mediation, Civil and Criminal Conviction Histories

- § 87(2)(b) rejected mediation § 87(2)(b) (encl. 5d).
- On January 12, 2015, a request to determine if a Notice of Claim was filed was submitted; confirmation from the Office of the Comptroller will be forwarded upon receipt (encl. 12f).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] (encl. 9e).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 3b).
- PO Michele Butera has been a member of the service for 4 years and there are no substantiated CCRB allegations against him (encl. 3a).

Finding and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) identified PO Michele Butera by his name and shield number and PO Butera acknowledged his role in the incident. § 87(2)(g)

Recommendations

- **Allegation A – Abuse of Authority: PO Michele Butera questioned an individual.**
- **Allegation B – Abuse of Authority: PO Michele Butera stopped an individual.**

PO Butera was interviewed at the CCRB on January 12, 2015 (encl. 6a-e). PO Butera explained that from ten to twelve feet away, he observed a man in a suit (identified by the

investigation as § 87(2)(b) walk over to a male dressed in casual clothing. Upon approaching the male, § 87(2)(b) immediately handed him something, which PO Butera described as a small white item (PO Butera used the index and thumb of both hands to form a rectangle to indicate the size he observed) and assumed to be drugs. PO Butera walked directly up to the male and pointedly asked him if a drug transaction had just transpired. PO Butera articulated that the male was not stopped and was free to leave. Although PO Butera noted in his memo book and the UF-250 that the male refused to provide his information, PO Butera explained that it was he who did not ask for his information as he did not need it for a stop, question, and frisk report since he neither stopped, frisked, nor searched him. However, PO Butera did complete a stop, question, and frisk report for the male and put “refused” where the civilian’s name should appear (encl. 8a-c).

According to People v. Debour, 40 N.Y.2d 210 (1976), officers are warranted in interacting with an individual to the extent necessary to gain explanatory information, also known as common-law inquiry, whenever there is founded suspicion that criminal activity is occurring (encl. 1a-k). With founded suspicion, officers can ask pointed questions that would reasonably lead individuals to believe they are suspected of a crime, and that the questions asked can be more extended and accusatory in order to focus upon possible criminality. Furthermore, Debour held that officers can forcibly stop and detain an individual whenever they have reasonable suspicion that the individual has committed, is committing, or is about to commit a crime. Officers have cause for reasonable suspicion if they observe an exchange of money for a small unknown object in a drug prone area. People v. Cardelle, 960 N.Y.S.2d 313 (2013 – 1st Dept.) (encl. 11)

§ 87(2)(g)

§ 87(2)(g)

- **Allegation C – Abuse of Authority: PO Michele Butera stopped § 87(2)(b)**
§ 87(2)(b) was interviewed at the CCRB on December 8, 2014 (encl. 5a-g). After PO Butera approached and spoke with the male, § 87(2)(b) articulated he did not feel free to leave the scene as PO Butera believed he was a participant in a drug transaction. § 87(2)(b) never stated PO Butera had directly addressed him at any time.

As stated above, PO Butera pointedly addressed the male upon his initial approach and later filled out a stop, question and frisk report for the male but not § 87(2)(b) (encl. 6a-e).

Surveillance footage from the main entrance of 280 East 161st Street confirmed PO Butera’s actions, that upon his initial approach, he directly spoke with the male and not § 87(2)(b) (encl. 9f).

§ 87(2)(g)

- **Allegation D – Abuse of Authority: PO Michele Butera searched an individual.**

§ 87(2)(b) alleged when PO Butera approached him and the male, PO Butera “demanded and ordered” the male three times to show what he had put in his pocket (encl. 5a-g). PO Butera denied having asked the male to provide what he had just put in his pocket (encl. 6a-e).

- § 87(2)(g), § 87(4-b) [REDACTED]

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